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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No.

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED FOR REVIEW

WHEN THE SUPREME COURT OF FLORIDA FOUND THAT THE STOP OF RESPONDENTS' BOAT FOR INSPECTIONS PURPOSES WAS VALID AND THAT RESPONDENTS WERE VALIDLY ARRESTED PRIOR TO HOLD OF THE BOAT BEING SEARCHED, DID THAT COURT INCORRECTLY FIND THE SEARCH OF THE HOLD INVALID WHEN IT WAS PROPER AS BEING INCIDENT TO ARREST, AS FALLING UNDER THE "CARROLL EXCEPTION" TO THE WARRANT REQUIREMENT AND AS AN APPROPRIATE INSPECTION FOR SAFETY REASONS.

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OPINIONS BELOW

Respondents' convictions were reversed by Florida's Third District Court of Appeal in *Casal v. State*, 375 So.2d 1077 (Fla. 3rd DCA 1979). The State obtained certiorari review by the Supreme Court of Florida, which approved of the district court's conclusion, although employing different reasoning, in *State v. Casal*, 410 So.2d 152 (Fla.1982). The opinion of the district court on remand is reported as *Casal v. State*, 411 So.2d 1040 (Fla.3rd DCA 1982).

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The opinion of the Supreme Court of Florida was filed on January 14, 1982. Rehearing was denied on March 15, 1982. Mandate was issued on March 15, 1982.

On May 19, 1982, this Court extended the time for the filing of this petition until June 13, 1982, a Sunday, thus making

the petition due on June 14, 1982. Petitioner forwarded to this Court a second motion for extension of time on June 10, 1982. In that motion, Petitioner sought an additional five days for the filing of this petition in light of an automobile accident which injured the mother of the undersigned counsel and which prevented the undersigned from having the petition prepared before June 14, 1982. On June 11, 1982, the undersigned counsel was informed by the Clerk's Office of this Court that only a total of 30 days could be granted in extending the time for filing a petition for a writ of certiorari, so Petitioner's motion could not be considered. The clerk's office also informed the undersigned counsel that a petition for a writ of certiorari can be considered even though filed beyond the date due and suggested that Petitioner file its petition and include therein the

factors set forth in this paragraph. Petitioner assures this Court that the only reason its petition was not filed prior to June 14, 1982, is the unforeseen automobile accident noted above.

This Court's jurisdiction is invoked pursuant to 28 *U.S.C.* §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Supreme Court of Florida stated the relevant facts as follows:

> While patrolling the Atlantic side of the Florida Keys at night, Officers Walker and Soli of the Florida Marine Patrol saw a fishing vessel then being operated by the respondents. Although the Marine Patrol had received several complaints from local fishermen that their traps were being raided, the officers initially had no suspicion that the operators of the vessel were engaged in illegal activity. Nevertheless, they pulled alongside the vessel and asked the captain to cut his engines. They then asked to see the boat's registration certificate which is legally required to be on board. *See* §371.051(5), Fla.Stat. (1977). The captain, Omar Garcia, produced a tax receipt and some other documents but could not locate the registration certificate. Because the boats were banging alongside each other, Officer Soli asked permission to board the vessel. The respondents assisted her on board.
>
> Upon boarding Officer Soli accompanied the respondents to the cabin to help look for the registration certificate. She testified that the respondents seemed agitated and apprehensive insofar as they were looking at each other a lot. She then asked to look in their icebox. After being told that would be fine she opened the icebox and saw some rotten food but no ice. This seemed strange to her since the captain had

> earlier said that they were on their way to Cay Sal to go fishing. She reported this finding to Officer Walker who had maneuvered the Marine Patrol vessel a few feet away to keep it from bumping into respondents' vessel. Officer Soli then asked to look in the forward hatch. Captain Garcia asked if she had a search warrant. Overhearing this exchange Officer Walker told Garcia that they did not need a search warrant since they were not conducting a search and that he was under arrest for not having a boat registration certificate on board. Garcia then said there was no need to go further and that the boat was loaded with grass. Officer Walker called respondents over to the side of the boat and after advising them of their *Miranda* rights asked them to confirm what was just said by opening the front hatch for Officer Soli's inspection. When they did so she discovered several bales of Marijuana.

410 So.2d at 153.

Prior to trial, Respondents moved to suppress the marijuana on the basis that the search was illegal since the officers had neither probable cause to stop the vessel nor, having stopped the vessel, probable cause to search it. The trial court denied the motion. Respondents proceeded

to trial and were convicted of violating Florida Statutes (1977) §893.03(1)(c) and §893.13(1)(a). They appealed and Florida's Third District Court of Appeal reversed, finding the stop to be invalid. *Casal v. State*, 375 So.2d 1077 (Fla.3rd DCA 1979). The State obtained review in the Supreme Court of Florida, which disagreed with the district court's conclusion regarding the stop and held it to be valid. That court, however, decided that despite the propriety of the stop, the marijuana should have been suppressed, because the search was unlawful. Accordingly, it approved the district court's reversal of the convictions. *State v. Casal*, 410 So.2d 152 (Fla.1982). Justice Alderman wrote an opinion concurring in part and dissenting in part, in which Justice McDonald joined. This opinion argued that the search was valid as a search incident to arrest and under the "Carroll exception" to the warrant requirement.

The propriety of the search was fully litigated at all levels of the state system, in the trial court, the district court of appeal and the state supreme court.

REASONS FOR GRANTING THE WRIT

A.

SEARCH INCIDENT TO ARREST

This Court in *Chimel v. California*, 395 U.S. 752 (1969), held that an officer may search incident to a lawful arrest the arrested person and the area within that person's immediate control. This rationale is applicable here and justifies the search.

As the Supreme Court of Florida noted, Respondents were under arrest when the officers searched the hold of the boat, finding the marijuana. In dealing with the scope of a search incident to the arrest of persons in automobiles, this Court makes it clear that the search here falls within this doctrine.

In *New York v. Belton*, ___ U.S. ___, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), this Court held that when the occupant of an automobile is subjected to a lawful custodial arrest, the scope of a search incident to arrest includes the entire passenger compartment of the automobile. *See also: United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (upholding actions of authorities which included search of vehicle trunk after arrest of three occupants).

The search here should be viewed in the same manner as the search in *Belton, supra*. The hold of a boat is easily accessible to the boat's occupants and no key is required to reach it. It is quite conceivable, as Justice Alderman noted below, that weapons might have been in the hold or that other persons might have been there. Either situation would have created great danger, particularly in light of the fact that Re-

spondents were on board alone with the female officer. Moreover, the situation here certainly presents a more compelling justification for a search incident to arrest than did *Belton* since in that case the occupants had already been taken from the car.

B.

"CARROLL EXCEPTION"

The search is also valid under the "Carroll exception" to the warrant requirement. This doctrine arises from this Court's decision in *Carroll v. United States*, 267 U.S. 132 (1925), which held that a warrantless search of an automobile stopped by police officers who had probable cause to believe the vehicle contained contraband was not unreasonable within the meaning of the Fourth Amendment. The decision was based on the inherent mobility of an automobile and is of course at least equally applicable to boats.

Indeed, it should logically be considered to be more applicable since a boat can go in any direction, while an automobile is restricted to the roads. Such a search may even probe compartments and containers within a vehicle whose contents are not in plain view. *United States v. Ross*, ___ U.S. ___, 31 Cr.L. 3051 (1982).

In the present case, the Supreme Court of Florida found that probable cause did not exist. This conclusion is inexplicable in light of the fact that, as recognized in the court's opinion, Respondent Garcia told the officers, prior to the search of the hold, that the boat was loaded with marijuana. Given this clear existence of probable cause and the mobility of the boat, the search was justified under the "Carroll exception." The mere fact that the officers may have been able to secure the boat does not render the "Carroll exception" inapplicable. See: *Chambers v. Maroney*, 399 U.S. 42 (1970).

C.

INSPECTION SEARCH

A third ground also exists to validate the search here. Even if the statement by Respondent Garcia is not considered, it must be remembered that Respondents were unable to produce their registration certificate, which they were required by law to have on board, *Florida Statutes* (1977) §371.051(5), and that they had no ice in their icebox despite telling the officers that they were going to Cay Sal to go fishing. These facts alone are certainly not sufficient to establish probable cause in the criminal law sense, but they are, as even the Supreme Court of Florida recognized, "suspicious circumstances", 410 So.2d at 156, and gave reason to believe that there might well be safety violations or other such irregularities. Since the stop in this case was for the purpose of checking

fishing permits, registration certificates and safety equipment, 410 So.2d at 155, these circumstances justified a search to determine whether such improprieties existed. Such a search does not have to be supported by the same degree of probable cause as does a search conducted in the course of a criminal investigation. See *Camara V. Municipal Court*, 387 U.S. 523 (1967) (where considerations of health and safety are involved, the facts that would justify an inference of probable cause to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken, 387 U.S. at 538, quoting from *Frank v. Maryland*, 359 U.S. 360 (1959), Douglas, J., dissenting). See also *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978) (entitlement of the Secretary of Labor to inspect for violations of the Occupational Safety and Health Act of 1970 [OSHA] will not depend on his demonstrating

probable cause to believe that conditions in violation of OSHA exist on the premises; probable cause in the criminal law sense is not required, 436 U.S. at 320).

The Supreme Court of Florida applied the incorrect standard in requiring probable cause in the criminal law sense, "Without consent, the officers were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed." 410 So.2d at 156. The court below therefore misapplied this Court's standards regarding searches of this nature.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that this Court should grant certiorari and quash the decision of the Supreme Court of Florida,

Respectfully submitted,

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